IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3233 OF 2005.
WITH
WRIT PETITION NO. 3147 OF 2004.

Mewalal Surajbali Gupta. ... Applicant.

V/s.

Ramji Surajbali Gupta
and others. ... Respondents.

J.M.D'Silva for the applicant.

E.K.Sasidharan for respondent No.1.

R.S.Tripathi for respondent Nos.3 and 4.

CORAM: V.C.DAGA, J.

DATED: 15th December 2005.

P.C.:

. By consent of parties Civil Application No.3233/2005 is allowed.

2. Petition is not on board. By consent of parties petition is taken up on board. Rule made returnable forthwith.

3. Heard rival parties.

. This petition is directed against the order dated 23rd February, 2004 passed by the Small Causes Court, Bombay in Interim Notice No.4179 of 2000 in R.A.D. Suit No.299 of 1997, whereby the interim notice taken out by the petitioner/ plaintiff under order VI rule 17 of Code of Civil Procedure, 1908 came to be rejected.

4. The factual matrix of the case reveals that the petitioner claims to be a tenant in respect of room No.2-A and shop No.2, situated on the ground floor, R.K.Building No.1, Junction of Ranade Road and Gokhale Road, Dadar, Mumbai. It appears that somewhere on 8th July, 1993 a deed of assignment transferring tenancy rights in respect of shop No.2 in favour of younger brother of respondent No.1/ original defendant No.1 retaining the tenancy rights in respect of residential premises i.e. room No.2-A came to be executed. Right from 1993 to 1997, defendant No.2- landlord (respondent No.2 herein) did not transfer tenancy rights in respect of room No.2-A in favour of respondent No.1/ defendant No.1.

5. The suit came to be filed for declaration and injunction.

6. It appears that during pendency of the suit, respondent No.2/ defendant No.2 transferred suit premises, both room No.2A and shop No.2 in favour respondent Nos.3, 4 and 5. In other words, during the pendency of the suit interest in their favour came to be created.

7. The amendment application being Interim Notice No.4179 of 2002 was moved by the plaintiff

seeking to join respondent Nos.3, 4 and 5 as party defendants to the suit in view of creation of interest in their favour during the pendency of the suit. As stated hereinabove, this interim notice came to be rejected by the trial Court vide order dated 23rd February, 2004. This order is a subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

8. Having taken survey of factual matrix of the case, in my opinion, since the suit premises has been transferred in favour of respondent Nos.3, 4 and 5 during the pendency of the suit therefore, their presence before the Court is necessary for effective adjudication of the issues involved in the suit. Even otherwise, this being a subsequent event it has to be brought on record.

9. The learned counsel appearing for the petitioner relied upon the judgment of this Court in the case of **Chitralekha Builders & Anr. v. G.I.C.Employees Sonal Vihar Co-op. Hsg. Soc. Ltd.**, 2005 (4) ALL MR 584 and submitted that considering the ratio of judgment and considering the necessity of presence of the parties before the Court, the interim notice could not have been rejected by the trial Court.

10. He has also relied upon **Mudra Salt & Chem v. Collector, Thane**, 2001 (3) Mh.L.J. 151 to contend that the amendment to the plaint needs to be allowed even if it is made at belated stage. He, thus, prayed that the impugned order be set aside and the petition may be allowed.

11. Learned counsel for the respondents tried to support the impugned order but could not take their submissions to the logical end.

12. Thus, considering the totality of the submissions made, the impugned order is unsustainable. Submissions made by the learned counsel for the petitioner deserve acceptance. Impugned order is liable to be quashed and set aside. Accordingly, the impugned order is quashed and set aside. Interim Notice No.4179 of 2002 is allowed and made absolute in terms of this order. Petitioner is directed to carry out necessary amendment in the cause title of the suit within four weeks from the date of receipt of this order by the trial Court. Thereafter, the trial Court is directed to proceed with the suit in accordance with law. Needless to mention that all rival contentions are kept open, which the parties would be entitled to canvass before the trial Court.

13. Rule is made absolute in terms of this order with no order as to costs.

14. The petitioner has deposited in this Court Rs.50,000/- to show his bonafides. In view of this order, he would be entitled to claim refund of Rs.50,000/-. Accordingly, registry is directed to refund this amount to the petitioner by payees-account cheque drawn in favour of the petitioner.

(V.C.DAGA, J.)